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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments of STAR Telecommunications, Inc.
IB Docket No. 98-212; GlobalVenture of AT&T and BT


Dear Ms. Salas:

Transmitted herewith, on behalf of STAR Telecommunications, Inc., are an original and four copies of "Comments" regarding the above-referenced matter.

Also enclosed is an additional copy of the filing marked "Stamp & Return." It is requested that you date stamp this copy and return it to this office via my messenger.

In the event there are any questions concerning this matter, please contact the undersigned.

Very truly yours,


Gregory C. Staple

Enclosures

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Before the
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Washington, D.C. 20554

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WASHINGTON, D.C. 20554

In the Matter of)
)
The Global Venture of AT&T Corp. and) IB Docket No. 98-212
British Telecommunications plc)

TO: The Commission

COMMENTS OF STAR TELECOMMUNICATIONS, INC.

STAR Telecommunications, Inc. (STAR), by its attorneys and pursuant to the FCC's *Public Notice*, DA 98-2412, released November 27, 1998, hereby comments on the above-captioned application of AT&T Corp. (AT&T) et al. for Commission authority to establish and operate a joint venture (hereafter "Global Venture") between AT&T and British Telecommunications plc ("BT") to provide international telecommunication services.¹

I. Executive Summary

This docket presents the Commission with a landmark issue: is the public interest served -- and, in particular, competition for wholesale carriers' carrier services, which underlies competition at the retail level -- by permitting the largest international operators in the U.S. and the U.K. to pool their networks, foreign interconnection arrangements and international traffic streams so as to create the world's biggest super-carrier. It is STAR's view that the current record is quite inadequate to resolve this question.

¹ More specifically, the applicants seek: (1) grant of Section 214 authority to Global Venture companies, VLT Co. LLC ("US LLC") and TNV [Bahamas] Limited ("TLTD"); (2) authority to transfer certain AT&T international cable facilities to US LLC and TLTD and modification of AT&T's existing Section 214 authority accordingly; and (3) consent to the assignment of certain earth station and submarine cable landing licenses from AT&T or its subsidiaries to US LLC and Violet License Co. LLC (US Sub LLC).

The applicants have not disclosed the terms of the international accounting rate and facility agreements which the Global Venture will inherit from BT and whose benefits apparently will be passed on directly to AT&T and affiliated companies. For some years, the U.K. has permitted BT to originate and terminate international traffic under rules which are significantly less restrictive (e.g., one-ended international simple resale is permitted on all routes and there are no express limits on switched hubbing) than those which now govern AT&T. Absent close scrutiny by the FCC, if the Global Venture is allowed to assume AT&T's current international carrier business, then AT&T will become a de facto U.K. carrier with a set of settlement and facility arrangements which are more favorable than those of any other U.S. carrier, and which are beyond the FCC's purview. Moreover, because BT remains dominant in the U.K. (a Well Established Operator (WEO) in U.K. parlance), the Global Venture also would be able to leverage BT's market power to advantage the Venture's owners vis-a-vis other U.S. carriers.

Second, the applicants have not disclosed adequate information about the terms on which third parties (i.e., non-affiliated carriers) will be able to acquire services from the Global Venture. Available information (e.g., the Framework Agreement, Exhibit P) suggests that AT&T and BT would have access to the venture's services on terms not available to competing carriers, such as STAR, even though AT&T says the venture will operate as a common carrier and thus presumably could not discriminate amongst carrier customers. Third, the applicants have not explained how any Global Venture company may jointly own the U.S.-U.K. transmission facilities of AT&T and BT (e.g., whole circuits) when BT's existing U.S. affiliate is regulated as dominant on the U.S.-U.K. route.²

² See *Order and Authorization*, File No. ISP 96-007-ND, DA 97-2071, released (continued...)

Once the record has been supplemented as to these and other relevant matters, the FCC should provide an opportunity for further comment. At this time though, STAR believes that the proposed combination is unlikely to serve the public interest unless it is subject to specific competitive safeguards to ensure that all Global Venture companies abide by the FCC's International Settlement Policy (ISP) in its current form -- that is abide by U.S. rather than U.K. rules -- for traffic which originates or terminates in the U.S. Safeguards also appear necessary to prevent the Global Venture's common carrier businesses from discriminating unlawfully in favor of affiliated entities vis-a-vis third parties in violation of Sections 201 to 203 of the Communications Act.

II. Discussion

A. Background

Upon consummation of the transactions proposed by AT&T, the existing U.S. international telecommunication facilities and FCC authorizations held by AT&T will be indirectly owned by the Global Venture through a Dutch holding company (TNV [Netherlands] BV), owned equally by AT&T and BT. That holding company also will indirectly own the U.K. international telecommunication facilities and authorizations of BT.³ All AT&T and BT correspondent agreements (e.g., accounting rate arrangements for switched telephone traffic)

²(...continued)

September 25, 1997. Dominant U.S. carriers may not "jointly own transmission or switching facilities" with their foreign affiliates. 47 CFR §63.10(c)(2)(ii).

³ The non-U.K. and non-U.S. international facilities and authorizations of AT&T and BT respectively also will be transferred to the Global Venture. See "*Application And Public Interest Statement In Support Of The Global Venture Of AT&T Corp. And British Telecommunications plc*," dated November 10, 1998 (hereafter, "Global Venture Application"), pp. 6-7, and p. 7, n. 6.

apparently will also be assigned to the Global Venture.

In distinction to AT&T and BT today, therefore, the Global Venture will be able to offer international telecommunication services to and from the U.S. and U.K. *via* a common trans-national network platform. The Global Venture would also act as a supra-national carrier vis-a-vis other carriers. On behalf of AT&T and BT, which will distribute the Global Venture's services domestically,⁴ the venture will "manage relationships with foreign carriers and negotiate accounting rates and settlements."⁵

B. The Public Interest In The AT&T-BT Global Venture Cannot Be Resolved Absent Supplemental Information And A Further Opportunity For Public Comment.

The applicants acknowledge that they have the burden of demonstrating that the public interest would be served by the FCC approvals sought here.⁶ However, the extent to which competition for international service will be increased, not diminished, by the proposed Global Venture, a core public interest consideration, cannot be determined on the current record because perhaps 50% of the inputs for the new venture -- namely, the facilities and correspondent agreements to be contributed by BT-- are not disclosed. Nor have the applicants disclosed critical details regarding the interconnection terms between the Global Venture and AT&T and BT. Thus, the Commission cannot fairly judge how the new venture will operate, although it

⁴ Outside the U.S. and U.K., affiliated AT&T and BT companies will also act as distributors. See "*Joint Venture Between AT&T Corp. and British Telecommunications plc*" as of October 23, 1998 (hereafter, "Framework Agreement") at ¶¶ 9.2 and 9.3.

⁵ *Id.*, p.7. See also Exhibit P to the Framework Agreement ("Principles For Operation of the [Global Venture's] International Carrier Services Unit") discussed *infra*.

⁶ See e.g., *Application*, pp. 10-34. See also *Memorandum Opinion and Order, In the Matter of the Merger of MCI Communications Corporation and British Telecommunications, plc*, 12 FCC Rcd 15351, ¶¶ 28-33 (1997) (hereafter "*BT/MCI II*").

appears that it will seek to leverage BT's market power and regulatory status to advantage AT&T (and BT) in providing carriers' carrier services to affiliated operators.

1. Compliance With FCC Settlement Policies And Rules

As AT&T well knows, the International Settlement Policy (ISP) currently requires that, absent an FCC waiver or declaratory ruling and except for International Simple Resale (ISR) traffic, all U.S. carriers must disclose and maintain parallel settlement rates; U.S. carriers also must accept return traffic only in proportion to their outbound stream.⁷ Similarly, the FCC's current rules bar a U.S. carrier from accepting a special concession from a foreign carrier with market power (e.g., an operating agreement or interconnection arrangement involving services or facilities necessary to provide basic telecommunications which is not offered to other U.S. carriers).⁸ Available information suggests that the operating practices of the Global Venture company, TLTD, and/or subsidiaries, would violate both of these policies.

From the outset, TLTD apparently will pick up U.S. traffic from AT&T, pool it with that of BT (and affiliates), and terminate it at foreign points, apparently with the benefit of BT's settlement rates or alternative termination arrangements. By refiling U.S. inbound traffic *via* the U.K., which, as noted, does not have the same restrictions on ISR as the U.S.,⁹ TLTD likewise apparently will benefit from arrangements which BT has struck to land traffic in the U.K.

⁷ See 47 CFR §§43.51(a) and (e), 64.1001 and 64.1002.

⁸ 47 CFR §63.14. As noted, in the U.K. BT is still considered to have market power (i.e., be dominant) by the FCC.

⁹ For example, as of 1 July 1996, the U.K. lifted the "equivalency" requirement for ISR, thus allowing two-way ISR on any route subject to certain conditions. See "*U.K. To Open Up International Telecommunications Services: BT-Mercury Duopoly Ended.*" DTI Press Notice, 6 June 1996. One-ended ISR was previously deregulated.

although such arrangements are not generally available (or disclosed) to other U.S. carriers.¹⁰

Indeed, it appears that TLTD will be contractually obliged to engage in just such activities pursuant to the operating principles which AT&T and BT have adopted for the new venture.¹¹

STAR does not take issue with the applicants' goals. But AT&T has not explained how the means to that end -- pooling the AT&T and BT international traffic and correspondent agreements -- can achieve that end without also co-mingling AT&T's U.S. traffic with that of BT and its affiliates on hundreds of different routes and, in so doing, running afoul of the FCC's current settlement rules.

STAR recognizes that the FCC has proposed to relax these rules on competitive routes.¹² Yet, just seven weeks before filing the instant application, AT&T urged the Commission to proceed cautiously and to require continued disclosure of all U.S. carrier settlement agreements. In AT&T's view, no U.S. carrier should be permitted to implement a "secret" (i.e., non-disclosed) alternative settlement arrangement even where the arrangement involves less than 25% of

¹⁰ Notably, where the U.S. carriers are permitted to engage in switched hubbing, they must reoriginate the traffic at "published rates" in the hub country. 47 CFR § 63.17(b)(1). BT, to our knowledge, has no such obligation and the current AT&T application does not disclose the U.K. (or U.S.) rates which TLTD will pay to affiliated companies (or otherwise) for reorigination. Assuming the Global Venture plans to engage in switched hubbing these rates should be disclosed here. *See also* note 14, *infra*.

¹¹ *Framework Agreement, Exhibit P*, at Introductory ¶ C; and ¶¶ 3.1(a) and (b). Under these principles, the venture "will operate as a single integrated business for correspondent, hubbing alternative termination and other associated agreements . . ."; it will "have the sole and exclusive responsibility for . . . making routing decisions with respect to Parental [AT&T, BT] Traffic in order to optimize the use of all available networking and routing mechanisms . . ."; and it will "combin[e] traffic management capabilities, provisional arrangements and hubbing plans to obtain a low cost of access globally."

¹² *See* Notice of Proposed Rule Making, IB Docket Nos. 98-148 et al, FCC 98-190, released August 6, 1998.

U.S. traffic on a given route.¹³ However, if AT&T is able to deliver its traffic to the Global Venture for termination on such terms as it may inherit from BT or otherwise, and such terms are not subject to FCC disclosure and public comment, then AT&T will be able to reap the benefit of the very kind of “secret” termination arrangements which it has publicly opposed. In these circumstances, by AT&T’s own standards, the FCC cannot assess the public interest in the Global Venture’s accounting rate bypass activities, even where legal (e.g., for ISR and switched hubbing) absent full disclosure of all the BT correspondent agreements and international facility arrangements assigned to the Global Venture.¹⁴

Full disclosure of these terms also is necessary to determine the extent to which the Global Venture could use the joint traffic base of AT&T and BT to take advantage of growth-based accounting rates negotiated by AT&T and BT (or their foreign affiliates). In the past, the FCC repeatedly has found it necessary to police growth-based rates negotiated by AT&T to ensure that other U.S. carriers obtain similar per minute termination rates taking into account their relative traffic volumes.¹⁵ The risk of such discrimination obviously is all the greater here given the incentive of the Global Venture to leverage AT&T and BT’s combined traffic base.

¹³ See “Comments of AT&T Corp.,” IB Docket No. 98-148 et al., dated September 16, 1998, p. 25. The FCC did not propose to repeal the filing requirement for alternative settlement arrangements involving more than 25% of U.S. inbound or outbound traffic; such arrangements also must not contain unreasonably discriminatory terms and conditions.

¹⁴ Although Oftel has posted BT’s accounting rates as of August 1998 (*see* <http://www.oftel.gov.uk/feedback/tiar998.htm>) the posting does not disclose much important information about BT’s correspondent arrangements on any given route (e.g., expiration date of agreement, methodology for growth based rate, backhaul terms).

¹⁵ See e.g., *Memorandum Opinion, Order and Authorization*, 12 FCC Rcd 13807 (rel. Sept. 10, 1997) (Bureau Order) *aff’d Order on Review*, FCC 98-277, released December 3, 1998.

The applicants should also be required to disclose the BT international facility arrangements which the Global Venture will inherit because the Commission has long recognized that provisioning terms as much as prices can lead to discriminatory treatment of unaffiliated carriers¹⁶ and, as noted, BT has market power in the U.K.¹⁷ For example, through the assignment of the BT cable, satellite or terrestrial facilities, the Global Venture -- and hence AT&T -- may enjoy preferential interconnection arrangements (regarding maintenance, restoration, trouble shooting, etc.) with foreign carriers.

The public interest may or may not be served by permitting AT&T to piggyback on all of BT's arrangements, but the Commission cannot approve those arrangements sight unseen. Under Section 214 and past precedents, the FCC cannot grant TLTD, and hence AT&T, a blank check to acquire any and all international facilities on whatever terms it chooses from BT. It has an obligation independently to identify which facilities are involved, and then to determine whether the acquisition involves any special concessions not available to other U.S. correspondents.¹⁸

An independent FCC assessment of the joint whole circuit facilities platform TLTD seeks

¹⁶ See e.g., *Foreign Carrier Participation Order*, 12 FCC Rcd 23, 891, 23, 957-65 (1997).

¹⁷ In 1998, BT asked Oftel to determine that it lacked market power in providing carriers' carrier services on 25 routes. The application is still pending. In so doing, BT implicitly admitted that it remains dominant for international carrier and retail services on most routes. See generally "*Review of Cable and Wireless Communications' Status as a Well Established Operator*," Consultative Document, Oftel, October 1998 at ¶ 2.9 (<http://www.oftel.gov.uk/competition/weo1098.htm>).

¹⁸ Again, in the ISP reform docket, AT&T has publicly urged the FCC to continue applying its no "special concession" rule to international facility arrangements, which AT&T defines as "interconnection of international facilities, private line provisionary and maintenance and quality of service," even if said rule no longer applies to traffic settlement terms. See "Reply Comments of AT&T Corp.," IB Docket No. 98-148 et al., dated October 16, 1998, p. 28.

is also warranted given that BT's existing U.S. affiliate, BT North America, Inc. (BTNA), is still classified as dominant on the U.S.-U.K. route. As a dominant carrier, BTNA may not jointly own transmission or switching facilities on the U.S.-U.K. route with BT. Given that prohibition, the applicants do not explain how the U.S. carrier, TLTD, which will become an affiliate of BT, may itself jointly own both AT&T and BT's international transmission and switching facilities on the U.S.-U.K. route.¹⁹

2. Compliance With Nondiscrimination Requirements Of The Communications Act.

By seeking operating authority under Section 214, TLTD and USLLC have implicitly agreed to operate as U.S. common carriers and, as such, will be governed by the general non-discrimination and tariff obligations of Title II of the Communications Act. In fact, AT&T maintains that the regulatory status of these companies constitutes one of the major public interest benefits of the Global Venture because TLTD et al will pass through cost savings "not only [to] retail customers of AT&T and BT but...[to] other carriers on a common carrier basis."²⁰

STAR welcomes this representation: the FCC should require the Global Venture to serve all U.S. carriers indifferently. Again, however, the current record is insufficient to verify AT&T's commitment because, among other things, AT&T has not disclosed the specific terms and conditions (e.g., price schedules) on which AT&T and BT will obtain service from the

¹⁹ Significantly, in the foreign carrier proceeding, IB Docket Nos. 97-142, et al, AT&T argued for an even greater degree of structural separation (i.e., separate officers, directors and employees) between a U.S. carrier and its dominant foreign affiliate to assist the FCC in identifying cost misallocation and cross subsidization, *Foreign Carrier Participating Order*, 12 FCC Rcd 23891, *supra* at ¶ 235 quoting "AT&T Comments" at 51-52.

²⁰ Global Venture Application, p. 9.

TLTD and associated companies.²¹ Beyond that, the operating principles for the Global Venture strongly imply that AT&T and BT will enjoy a net price advantage in obtaining service from the Global Venture because they would benefit from special dividends, a direct pass through of lower settlement costs (the venture's owners would have the option of obtaining capacity at a "transfer price" instead of a "market price") and a "Most Favored Nation" pricing option.²² In view of the foregoing, the FCC should require AT&T to docket the complete terms of all schedules and exhibits to the Framework Agreement as finalized, and to show affirmatively that all carriers will have access to the Global Venture on terms which comply with Sections 201 to 203 of the Communications Act.

III. Conclusion

AT&T should be directed promptly to supplement the record as described herein following which further public comment should be invited. In any event, the FCC should not grant Section 214 authority to any Global Venture company without imposing specific competitive safeguards to ensure that said companies (1) do not discriminate against unaffiliated entities

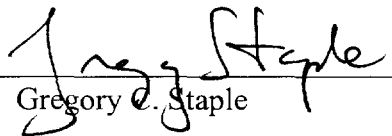
²¹ The draft "Form of International Traffic Service Agreement" for AT&T and BT appended to the Framework Agreement as Exhibits D-1 and D-2 is silent as to the price terms; omit key schedules (e.g., Exh. D-2, Schedule 1 re prices); and are only draft contracts. The "Form of Distribution Agreement" (Exhibits F-1 and F-2) likewise provide no details as to prices and omit the schedules covering "charges" (Schedule 8). Similarly, none of the relevant schedules (e.g., Schedules 9.1(a) and (b)) to the Framework Agreement have been filed by AT&T.

²² See Framework Agreement, Exhibit P, ¶¶ 4.1(b), 4.6(f) and 4.9(f). In addition, the Joint Venture apparently will buy-in regulated services from BT at a standard 25% mark up. *Id.*, Exhibit K-2, page 1. The terms for AT&T are not disclosed.

in providing common carrier service and (2) abide by the ISP.

Respectfully submitted,

STAR TELECOMMUNICATIONS, INC.

By: 
Gregory C. Staple

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January 18, 1999

Its Attorneys

CERTIFICATE OF SERVICE

I, Donna K. Rhudy, a legal secretary in the firm of Koteen & Naftalin, L.L.P., hereby
certify that on the 18th day of January 1999 copies of the foregoing "Comments of STAR
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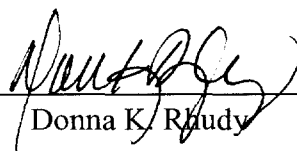
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